

2018

SETS EFFECTIVE DATE FOR BALLOT MEASURES. LEGISLATIVE CONSTITUTIONAL AMENDMENT.

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PROPOSITION
71 SETS EFFECTIVE DATE FOR BALLOT MEASURES.
LEGISLATIVE CONSTITUTIONAL AMENDMENT.

OFFICIAL TITLE AND SUMMARY

PREPARED BY THE ATTORNEY GENERAL

The text of this measure can be found on the Secretary of State's website at <http://voterguide.sos.ca.gov/>.

- Provides that a ballot measure approved by a majority of voters shall take effect five days after the Secretary of State certifies the results of the election.
- Allows a ballot measure to provide that it will become operative at a date later than its effective date.

**SUMMARY OF LEGISLATIVE ANALYST'S
ESTIMATE OF NET STATE AND LOCAL
GOVERNMENT FISCAL IMPACT:**

- Likely little or no effect on state and local finances.

FINAL VOTES CAST BY THE LEGISLATURE ON ACA 17 (PROPOSITION 71)
(RESOLUTION CHAPTER 190, STATUTES OF 2017)

Senate:	Ayes 40	Noes 0
Assembly:	Ayes 78	Noes 0

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

State Ballot Measures. At statewide elections, California voters get to vote on state ballot measures. These measures (also called propositions) include:

- **State Initiatives and Referenda.** These are changes to the State Constitution, changes to state laws, and bond measures proposed by citizens, who gather signatures to place these measures on the ballot.
- **Legislative Ballot Measures.** These are changes to the State Constitution, changes to previously approved initiatives, and bond measures placed on the ballot by the California Legislature.

Changes in Elections Over Time. Changes in state and federal laws and decisions by individual voters have affected voting practices in recent decades. In California, perhaps the most noteworthy change has been the growing use of mail ballots. In the November 1970 election, about 200,000 California voters (3 percent of the total) cast a ballot by mail. By contrast, in November 2016, more than 8 million voters (58 percent of the total) cast a mail ballot. State and federal laws also allow for “provisional” ballots—for example, for people who believe they are registered even though their names are not on a polling place's voter list. Mail and provisional ballots received right around Election Day often are counted in the days or weeks afterward.

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

Timeline for Counting State Election Ballots.

Election officials in each county have to count every ballot that is legally cast, including mail ballots received soon after Election Day. The current vote counting process lasts for several weeks after Election Day. During that period, county officials count up to several million mail ballots and other ballots that are still not counted at the end of Election Day. They also recheck precinct vote counts. After receiving results from each county, the Secretary of State—who oversees elections throughout the state—certifies a formal “statement of the vote” more than five weeks (specifically, no later than 38 days) after Election Day.

Effective Date for State Ballot Measures.

The State Constitution provides that state initiatives and referenda, as well as legislative ballot measures that change the State Constitution, take effect the day after the election unless the ballot measure sets a later effective date. In most cases, it is clear at the end of Election Day whether a ballot measure has been approved by voters. In some cases, however, the results are not clear, and millions of ballots are not counted until days or weeks later.

PROPOSAL***Later Effective Date for State Ballot***

Measures. As described above, the Secretary of State files the statement of the vote no later than 38 days after Election Day—after receiving voting

results from each county. This measure amends the State Constitution so that state initiatives and referenda, as well as legislative ballot measures that change the State Constitution, take effect on the fifth day after the Secretary of State files the statement of the vote. Therefore, if this measure is approved, most state ballot measures would take effect about six weeks (no later than 43 days) after Election Day. This would allow counties to finish counting ballots and the Secretary of State to certify results before these ballot measures go into effect.

FISCAL EFFECTS

Little or No Fiscal Effect Likely. Currently, state ballot measures generally take effect on the day after Election Day. It is rare, however, for measures to change state or local revenues or spending substantially in the weeks immediately after Election Day. For this reason, delaying the effective date of ballot measures by a few weeks likely would have little or no effect on state and local finances.

Visit <http://www.sos.ca.gov/campaign-lobbying/cal-access-resources/measure-contributions/2018-ballot-measure-contribution-totals/> for a list of committees primarily formed to support or oppose this measure. Visit <http://www.fppc.ca.gov/transparency/top-contributors/jun-18-primary.html> to access the committee's top 10 contributors.

If you desire a copy of the full text of the state measure, please call the Secretary of State at (800) 345-VOTE (8683) or you can email vigfeedback@sos.ca.gov and a copy will be mailed at no cost to you.

★ ARGUMENT IN FAVOR OF PROPOSITION 71 ★

Proposition 71 is a simple common sense update of our elections laws, which will ensure accurate results following the approval of a ballot measure by voters. This is a non-controversial constitutional fix with bi-partisan support.

Proposition 71 provides that an initiative statute, referendum, or constitutional amendment approved by the voters takes effect *after* the Secretary of State has fully and completely counted all the votes and files the Statement of Vote.

Under existing law an initiative statute, referendum, or constitutional amendment approved by the voters takes effect on the day after the election, unless otherwise specified by the measure itself. However, existing law has created some uncertainty for Californians who are directly impacted by propositions. An example was Proposition 67 (2016), a referendum relating to the ban on single-use plastic bags, signed into law by the Governor in 2014. Californians voted in favor of Proposition 67 which allowed the ban to stand, however questions remained as to when the actual ban, established by the Legislature, would go into effect. Proposition 71 will prevent such confusion in future elections by shifting the implementation date of measures to after election results are certified by the Secretary of State, providing a clear effective date for statewide propositions.

Proposition 71 will enhance the accuracy of statewide election results. In 2016, 53% of all voters (about 9.2 million Californians) were registered to vote-by-mail. Given the convenience, it is likely that the trend toward more voters choosing to vote-by-mail will increase. This trend, while positively encouraging voter participation, has also lengthened the time it takes to count ballots. Elections officials must confirm each voter's registration status and verify each voter's signature on the vote-by-mail envelope. Additionally, mailed ballots may arrive at county elections offices on, or up to three days after, Election Day. In some instances, election results can be very close.

History has shown that results of an election contest can change after the Election Day vote tally. Shifting the implementation date of initiatives, referenda, and constitutional amendments to after election results have been certified by the Secretary of State will ensure the true and correct implementation of ballot measures. Please vote "YES" on Proposition 71.

KEVIN MULLIN, Speaker pro Tempore
California State Assembly

RALPH E. SHAFFER, Professor Emeritus
Cal Poly Pomona

HELEN HUTCHISON, President
League of Women Voters of California

★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 71 ★

The current language of the State Constitution makes a ballot measure approved by voters take effect (unless the measure otherwise provides) *"the day after the election."*

Because a measure cannot (chronologically) take effect until the result of the vote has been determined and certified, the phrase *"the day after the election"* means only that a measure which passes may be retroactive to that earlier date.

In the case cited by proponents, the voters' 2016 decision on a referendum to uphold the Legislature's ban on single-use plastic bags took effect when the outcome of the election was certified, and the earlier date did not matter. But sometimes an earlier (retroactive) date can matter.

For example, suppose there were an initiative on the June 5, 2018 ballot which proposed that serial child molesters had to be sentenced by judges to life in prison without the possibility of parole.

If Proposition 71 were to pass, the new life-in-prison law (in the above hypothetical) could not take effect until the final vote certification—giving child molesters time (up to 38 days currently) to attack more victims under the sentencing law voters had seen fit to change.

Proposition 71 appears to be unnecessary and disadvantageous in some situations.

GARY WESLEY

★ ARGUMENT AGAINST PROPOSITION 71 ★

This is a proposal by the State Legislature to amend two provisions of the California Constitution regarding most statewide ballot measures.

Some ballot measures (including this one) are proposed by the State Legislature; others qualify for the ballot through the voter petition process.

Anytime the State Legislature proposes to change the process, the proposal is worth examining carefully. Most legislators would not likely favor measures that qualify for the ballot through the petition process. Usually, the petition process is used when the Legislature will not make a change on its own or has passed a law that voters want to suspend and eliminate by “referendum.”

There is some danger in this measure that the State Legislature could, in the future and by its own enactment, delay how long the Secretary of State may take to declare the outcome of elections on measures (currently 38 days) and thereby undermine the process.

The Legislature’s summary of this measure (in what’s called Assembly Constitutional Amendment 17—“ACA 17”) reads as follows:

The California Constitution provides that an initiative statute, referendum, or constitutional amendment or revision approved by a majority of voters thereon takes effect the day after the election unless the measure provides otherwise. Existing law requires the Secretary of State to compile the results of all

statewide measures, and to prepare, certify, and file a statement of the vote from the compiled results no later than the 38th day after the election.

This measure would instead provide that an initiative statute, a referendum, or a constitutional amendment or revision approved by a majority of voters thereon takes effect 5 days after the Secretary of State files the statement of the vote for the election at which the measure is voted on, and the measure clarifies that an initiative statute, referendum, or constitutional amendment or revision may provide that it become operative after its effective date. This measure would also make nonsubstantive changes to these provisions.

While the summary is correct, some folks may wonder whether the Legislature is addressing a real problem with the existing Constitutional language (adopted way back in 1970). No law enacted by voters can ever take effect before the outcome of the vote has been determined. As currently written, the language makes changes retroactive to the day after an election (unless the enacted change otherwise provides). The amendments proposed by this measure would eliminate such an early (and retroactive) effective date for a law enacted by state voters.

Maybe proponents will explain more about why this measure is needed.

GARY WESLEY

★ REBUTTAL TO ARGUMENT AGAINST PROPOSITION 71 ★

Assembly Constitutional Amendment 17, which is now before California voters as Proposition 71, passed both houses of the Legislature with Republican and Democratic support. There was not a single “NO” vote cast. Why? Because, in bi-partisan fashion, lawmakers agreed that Proposition 71 is a minor, technical yet necessary fix. Proposition 71 clarifies an issue that may arise as a result of more voters choosing to cast their vote by mail.

Current law requires that ballot initiatives go into effect the day after the election. Proposition 71 simply clarifies existing law to be consistent with the reality that in some instances the results of elections may not be determined for several days after the election.

The California State Senate analysis notes: “Proposition 71 will delay the enactment of initiative or referenda until five days after the Secretary of State releases the Statement of Vote.

By delaying the enactment until after the vote has been certified, this measure ensures that the true and correct implementation of ballot measures occurs.”

Under California law, all changes to the Constitution must be approved by the voters. The Legislature cannot, on its own, delay implementation of voter enacted initiatives. In 1970, no one anticipated the growth in votes being cast by mail as we are seeing today. Proposition 71 is a minor, simple fix intended to clarify existing law. Please vote YES on Proposition 71.

KEVIN MULLIN, Speaker pro Tempore
California State Assembly, District 22

MARC BERMAN, Chair, Assembly Committee on
Elections and Redistricting

California State Assembly, District 24

HENRY STERN, Chair, Senate Committee on
Elections and Constitutional Amendments
California State Senate, District 27

California Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE XX

That Section 24 is added to Article XX thereof, to read:

SEC. 24. (a) The Greenhouse Gas Reduction Reserve Fund is hereby created as a special fund in the State Treasury.

(b) For the time period specified in subdivision (d) only, all moneys collected by the State Air Resources Board from the auction or sale of allowances pursuant to a market-based compliance mechanism established pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code) shall be deposited in the Greenhouse Gas Reduction Reserve Fund.

(c) Notwithstanding any other provision of this Constitution, moneys in the Greenhouse Gas Reduction Reserve Fund shall be available upon appropriation by the Legislature by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, for the same purposes applicable on January 1, 2024, to the Greenhouse Gas Reduction Fund, created pursuant to Section 16428.8 of the Government Code.

(d) Subdivision (b) shall apply beginning January 1, 2024, and until the effective date of legislation that contains an appropriation from the Greenhouse Gas Reduction Reserve Fund. After the effective date of that legislation, all new moneys collected pursuant to a market-based compliance mechanism shall be deposited in the Greenhouse Gas Reduction Fund, created pursuant to Section 16428.8 of the Government Code.

(e) Section 6377.1 of the Revenue and Taxation Code shall not apply to sales that occur while the moneys specified in subdivision (b) are being deposited in the Greenhouse Gas Reduction Reserve Fund, but shall resume on the effective date of legislation identified in subdivision (d).

PROPOSITION 71

This amendment proposed by Assembly Constitutional Amendment 17 of the 2017–2018 Regular Session (Resolution Chapter 190, Statutes of 2017) expressly amends the California Constitution by amending sections thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENTS TO SECTION 10 OF ARTICLE II AND SECTION 4 OF ARTICLE XVIII

First—That Section 10 of Article II thereof is amended to read:

SEC. 10. (a) An initiative statute or referendum approved by a majority of votes cast thereon takes effect on the fifth day after the election unless the measure provides otherwise. Secretary of State files the statement of the vote for the election at which the measure is voted on, but the measure may provide that it becomes operative after its effective date. If a referendum petition is filed against a part of a ~~statute~~ *statute*, the remainder of the statute shall not be delayed from going into effect.

(b) If provisions of 2 two or more measures approved at the same election conflict, those the provisions of the measure receiving the highest number of affirmative vote votes shall prevail.

(c) The Legislature may amend or repeal a referendum statutes. It statute. The Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their the electors' approval.

(d) Prior to Before circulation of an initiative or referendum petition for signatures, a copy shall be submitted to the Attorney General who shall prepare a title and summary of the measure as provided by law.

(e) The Legislature shall provide for the manner in which petitions a petition shall be circulated, presented, and certified, and measures the manner in which a measure shall be submitted to the electors.

Second—That Section 4 of Article XVIII thereof is amended to read:

SEC. 4. A proposed amendment or revision shall be submitted to the electors ~~and~~ *and*, if approved by a majority of votes ~~thereon cast thereon~~, takes effect ~~on the fifth day after the election unless the measure provides otherwise.~~ *Secretary of State files the statement of the vote for the election at which the measure is voted on, but the measure may provide that it becomes operative after its effective date.* If provisions of 2 ~~two~~ or more measures approved at the same election conflict, ~~those~~ *the provisions* of the measure receiving the highest *number of* affirmative ~~vote~~ *votes* shall prevail.

construction, installation, removal, or modification is for the purpose of making the building more accessible to, or more usable by, a disabled person.

(5) The construction or addition, completed on or after January 1, 2019, of a rain water capture system, as defined by the Legislature.

PROPOSITION 72

This amendment proposed by Senate Constitutional Amendment 9 of the 2017–2018 Regular Session (Resolution Chapter 1, Statutes of 2018) expressly amends the California Constitution by amending a section thereof; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO SUBDIVISION (c) OF SECTION 2 OF ARTICLE XIII A

(c) For purposes of subdivision (a), the Legislature may provide that the term “newly constructed” does not include any of the following:

(1) The construction or addition of any active solar energy system.

(2) The construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement, as defined by the Legislature, that is constructed or installed after the effective date of this paragraph.

(3) The construction, installation, or modification on or after the effective date of this paragraph of any portion or structural component of a single- or multiple-family dwelling that is eligible for the homeowner’s exemption if the construction, installation, or modification is for the purpose of making the dwelling more accessible to a severely disabled person.

(4) The construction, installation, removal, or modification on or after the effective date of this paragraph of any portion or structural component of an existing building or structure if the